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FILED
WILLIAMSPORT, PA

JUN 19 2001

MARY E. D'ANDREA, CLERK
Per _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

NOLAN BURLARK,
Plaintiff

vs.

LYCOMING COUNTY PRISON,
DAVID DESMOND, KIM POORMAN,
KEVIN DEPARLOS, TIM MAHONEY, and
JOYCE FAIRFAX,
Defendants

CIVIL NO. 1:CV-00-2170

JUDGE CALDWELL

DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION TO DEEM
MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT UNOPPOSED

PROCEDURAL BACKGROUND

On December 13, 2000, Plaintiff Nolan Burlark filed a Complaint against the Lycoming County Prison, David Desmond, Kim Poorman, Kevin Deparlos, Tim Mahoney, and Joyce Fairfax (collectively hereinafter referred to as "Motioning Defendants"). The Summons was issued to Motioning Defendants on January 12, 2001, and service was accepted on behalf of Motioning Defendants on January 29, 2001.

231214

On March 20, 2001, Motioning Defendants filed a Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) and filed a Brief in support thereof on April 3, 2001. The undersigned counsel as counsel for Motioning Defendants served copies of the Motion to Dismiss and Brief in support thereof on Plaintiff as evidenced by the Certificates of Service attached to the respective documents. Simultaneous herewith, Motioning Defendants filed a Motion to Deem Motion to Dismiss Unopposed, and this Brief is submitted in support thereof.

ISSUE PRESENTED

SHOULD THIS COURT GRANT MOTIONING DEFENDANTS' MOTION TO DEEM THEIR PREVIOUSLY FILED MOTION TO DISMISS UNOPPOSED FOR PLAINTIFF'S FAILURE TO FILE A BRIEF IN OPPOSITION?

Suggested Answer: In the affirmative.

ARGUMENT

In accordance with Rule 7.6 of the United States District Court for the Middle District of Pennsylvania, any party opposing a motion is required to file a responsive brief within fifteen (15) days after service of the movant's brief. Motioning Defendants, as movants, filed their brief with the Court and served Plaintiff a copy thereof on April 3, 2001. In accordance with Federal Rule of Civil Procedure 6(a) and (e), Plaintiff, as respondent to the Motion to Dismiss, was required to file his brief in opposition on or before April 23,

231214

2001. Although Plaintiff is Pro Se, he is not excused from following the Rules of Procedure as set forth in the Federal Rules and the United States District Court for the Middle District of Pennsylvania. Furthermore, on December 20, 2000, this Court issued its Standing Practice Order which summarizes Plaintiff's duties under the applicable Rules of Procedure. Plaintiff's failure to comply with Rule 7.6 of the United States District Court for the Middle District of Pennsylvania deems Motioning Defendants' Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) unopposed.

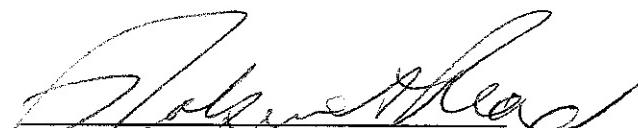
CONCLUSION

This Court should grant Motioning Defendant's Motion to Deem their Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) unopposed and to grant their Motion to Dismiss.

Respectfully submitted,

MCNERNEY, PAGE, VANDERLIN & HALL

By:



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Dated: 6/19/01

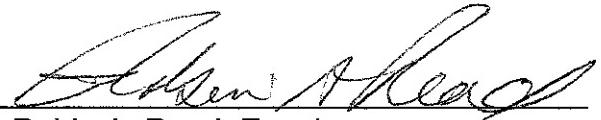
231214

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of June, 2001, a copy of Defendants' Brief in Support of its Motion to Deem Motion to Dismiss Unopposed was served by placing same in the United States Mail, First Class, postage pre-paid, to Mr. Nolan Burlark, Plaintiff, at Lycoming County Prison, MN-41886, 277 West Third Street, Williamsport, Pennsylvania 17701, and the original being filed the same date with the Clerk, United States District Court for the Middle District of Pennsylvania, Harrisburg, Pennsylvania.

McNERNEY, PAGE, VANDERLIN & HALL

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